



# House of Representatives

## File No. 816

General Assembly

January Session, 2017

**(Reprint of File No. 638)**

Substitute House Bill No. 7256  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 31, 2017

***AN ACT CONCERNING REVISIONS TO CERTAIN CRIMINAL JUSTICE  
STATUTES AND THE REPORTING OF THE DEATH OF ANY PERSON  
IN STATE CUSTODY.***

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1      Section 1. (NEW) (*Effective October 1, 2017*) Each department head, as  
2      defined in section 4-5 of the general statutes, including the  
3      Commissioner of Education, and the Chief Justice of the Supreme  
4      Court shall promptly notify the Division of Criminal Justice of any  
5      death of a person in the care, custody or control of any person or entity  
6      under the jurisdiction of such department head or the Chief Justice.

7      Sec. 2. Subsection (b) of section 53a-70c of the general statutes is  
8      repealed and the following is substituted in lieu thereof (*Effective*  
9      *October 1, 2017*):

10      (b) Aggravated sexual assault of a minor is a class A felony and any  
11      person found guilty under this section shall, for a first offense, be  
12      sentenced to a term of imprisonment, [of] twenty-five years of which  
13      may not be suspended or reduced by the court and, for any subsequent

14 offense, be sentenced to a term of imprisonment of fifty years which  
15 may not be suspended or reduced by the court.

16 Sec. 3. Subsection (c) of section 53a-167c of the general statutes is  
17 repealed and the following is substituted in lieu thereof (*Effective*  
18 *October 1, 2017*):

19 (c) In any prosecution under this section involving assault of a  
20 health care employee, as defined in section 19a-490q, it shall be [a] an  
21 affirmative defense that the defendant is a person with a disability as  
22 described in subdivision (13), (15) or (20) of section 46a-51 and the  
23 defendant's conduct was a clear and direct manifestation of the  
24 disability, except that for the purposes of this subsection, "mental  
25 disability", as defined in subdivision (20) of section 46a-51, does not  
26 include any abnormality manifested only by repeated criminal or  
27 antisocial conduct.

28 Sec. 4. Subsections (b) to (e), inclusive, of section 54-47aa of the  
29 general statutes are repealed and the following is substituted in lieu  
30 thereof (*Effective October 1, 2017*):

31 (b) A law enforcement official may apply for an ex parte order from  
32 a judge of the Superior Court to compel (1) a telecommunications  
33 carrier to disclose call-identifying information pertaining to a  
34 subscriber or customer, (2) a provider of electronic communication  
35 service or remote computing service to disclose basic subscriber  
36 information pertaining to a subscriber or customer, or (3) a  
37 telecommunications carrier or a provider of electronic communication  
38 service or remote computing service to disclose the content of a  
39 subscriber's or customer's communications or geo-location data  
40 associated with a subscriber's or customer's call-identifying  
41 information. [The] In the case of an application for an order to compel  
42 disclosure under subdivision (1) or (2) of this subsection, the judge  
43 shall grant such order if the law enforcement official swears under  
44 oath to a statement of [(A)] a reasonable and articulable suspicion that  
45 a crime has been or is being committed and such call-identifying or

46 basic subscriber information is relevant and material to an ongoing  
47 criminal investigation. [, in which case such order shall not authorize  
48 disclosure of the content of any communication or geo-location data,  
49 or (B)] In the case of an application for an order to compel disclosure  
50 under subdivision (3) of this subsection, if the judge makes a finding of  
51 probable cause to believe that a crime has been or is being committed  
52 and the content of such subscriber's or customer's communications or  
53 the geo-location data associated with such subscriber's or customer's  
54 call-identifying information is relevant and material to an ongoing  
55 criminal investigation, [in which case such order shall authorize] the  
56 judge shall grant such order authorizing the disclosure of such  
57 information, content or geo-location data. Any [such] order entered  
58 pursuant to this subsection shall state upon its face the case number  
59 assigned to such investigation, the date and time of issuance and the  
60 name of the judge authorizing the order. The law enforcement official  
61 shall have any ex parte order issued pursuant to this subsection signed  
62 by the authorizing judge within forty-eight hours or not later than the  
63 next business day, whichever is earlier. No order pursuant to this  
64 subsection shall authorize the disclosure of any such information,  
65 content or data for a period in excess of fourteen days.

66 (c) A law enforcement official may apply directly to a  
67 telecommunications carrier or provider of electronic communication  
68 service or remote computing service for production of geo-location  
69 data for a period not in excess of forty-eight hours, including real-time  
70 or historical geo-location data, or any combination of such data,  
71 pertaining to an identified subscriber or customer. The  
72 telecommunications carrier or provider of electronic  
73 telecommunication service or remote computing service may provide  
74 the requested geo-location data upon the applicant stating under oath:  
75 (1) That facts exist upon which to base a belief that the data sought is  
76 relevant and material to an ongoing criminal investigation; (2) a belief  
77 that exigent circumstances exist; and (3) the facts supporting the belief  
78 that exigent circumstances exist. Any subsequent application for  
79 information from the same telecommunication carrier or provider of

80 electronic communication service or remote computing service for  
81 production of geo-location data in connection with the same  
82 investigation shall be made pursuant to subsection (b) of this section.

83 (d) [A] Whenever an order is issued pursuant to subsection (b) of  
84 this section, a telecommunications carrier shall disclose to the  
85 appropriate law enforcement official call-identifying information or  
86 the content of a subscriber's or customer's communications or geo-  
87 location data, and a provider of electronic communication service or  
88 remote computing service shall disclose to the appropriate law  
89 enforcement official basic subscriber information [to a law enforcement  
90 official when an order is issued pursuant to subsection (b) of this  
91 section] or the content of a subscriber's or customer's communications  
92 or geo-location data, as directed by the order.

93 (e) Not later than forty-eight hours after the issuance of an order  
94 pursuant to subsection (b) of this section, the law enforcement official  
95 shall mail notice of the issuance of such order to the subscriber or  
96 customer whose call-identifying information, communications data or  
97 geo-location data or basic subscriber information is the subject of such  
98 order, except that such notification may be delayed for a period of up  
99 to ninety days upon the execution of a written certification of such  
100 official to the judge who authorized the order that there is reason to  
101 believe that notification of the existence of the order may result in (1)  
102 endangering the life or physical safety of an individual, (2) flight from  
103 prosecution, (3) destruction of or tampering with evidence, (4)  
104 intimidation of potential witnesses, or (5) otherwise seriously  
105 jeopardizing the investigation. The law enforcement official shall  
106 maintain a true copy of such certification. During such ninety-day  
107 period, the law enforcement official may request the court to extend  
108 such period of delayed notification. Such period may be extended  
109 beyond ninety days only upon approval of the court. The applicant  
110 shall file a copy of the notice with the clerk of the court [that issued  
111 such order] for the geographical area within which any person who  
112 may be arrested in connection with or subsequent to the execution of  
113 the order would be presented, and such notice shall include the case

114 number assigned to such investigation pursuant to subsection (b) of  
115 this section. If information is provided in response to the order, the  
116 applicant shall, not later than ten days after receiving such  
117 information, file with the clerk a return containing an inventory of the  
118 information received. Such return and inventory shall include the case  
119 number assigned to such investigation pursuant to subsection (b) of  
120 this section, and such return and inventory shall remain sealed until  
121 the copy of the notice is filed with the clerk pursuant to this section. If  
122 a judge finds there is a significant likelihood that such notification  
123 would seriously jeopardize the investigation and issues an order  
124 authorizing delayed notification under this subsection, the  
125 telecommunications carrier or provider of electronic communication  
126 service or remote computing service from whom the call-identifying  
127 information, communications data, geo-location data or basic  
128 subscriber information is sought shall not notify any person, other than  
129 legal counsel for the telecommunications carrier or provider of  
130 electronic communication service or remote computing service and the  
131 law enforcement official that requested the ex parte order, of the  
132 existence of the ex parte order. Any information provided in response  
133 to the court order shall be disclosed to the defense counsel.

134 Sec. 5. Subsection (f) of section 54-142a of the general statutes is  
135 repealed and the following is substituted in lieu thereof (*Effective*  
136 *October 1, 2017*):

137 (f) Upon motion properly brought, the court or a judge [thereof] of  
138 such court, if such court is not in session, [may] shall order disclosure  
139 of such records (1) to a defendant in an action for false arrest arising  
140 out of the proceedings so erased, or (2) to the prosecuting attorney and  
141 defense counsel in connection with any perjury charges which the  
142 prosecutor alleges may have arisen from the testimony elicited during  
143 the trial, or any false statement charges, or any proceeding held  
144 pursuant to section 53a-40b, or (3) counsel for the petitioner and the  
145 respondent in connection with any habeas corpus or other collateral  
146 civil action in which evidence pertaining to a nolle or dismissed  
147 criminal charge may become relevant. Such disclosure of such records

148 is subject also to any records destruction program pursuant to which  
149 the records may have been destroyed. The jury charge in connection  
150 with erased offenses may be ordered by the judge for use by the  
151 judiciary, provided the names of the accused and the witnesses are  
152 omitted therefrom.

153 Sec. 6. Section 51-277b of the general statutes is repealed and the  
154 following is substituted in lieu thereof (*Effective October 1, 2017*):

155 When any judge of the Superior Court, Appellate Court or Supreme  
156 Court or employee of the Judicial Department may be affected by a  
157 law enforcement investigation, any law enforcement agency  
158 conducting such an investigation shall inform the Chief State's  
159 Attorney and the appropriate state's attorney of such investigation in a  
160 timely manner. The Chief State's Attorney shall inform the Chief Court  
161 Administrator of such investigation, provided such disclosure does not  
162 compromise any such investigation. [The Chief State's Attorney shall  
163 adopt regulations in accordance with chapter 54 to implement the  
164 provisions of this section.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	New section
Sec. 2	<i>October 1, 2017</i>	53a-70c(b)
Sec. 3	<i>October 1, 2017</i>	53a-167c(c)
Sec. 4	<i>October 1, 2017</i>	54-47aa(b) to (e)
Sec. 5	<i>October 1, 2017</i>	54-142a(f)
Sec. 6	<i>October 1, 2017</i>	51-277b

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes various changes to criminal justice statutes that do not result in a fiscal impact.

House "A" makes procedural changes and does not result in a fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sHB 7256 (as amended by House "A")\******AN ACT CONCERNING REVISIONS TO CERTAIN CRIMINAL JUSTICE STATUTES AND THE REPORTING OF THE DEATH OF ANY PERSON IN STATE CUSTODY.*****SUMMARY**

This bill makes various changes to laws concerning certain crimes and criminal investigations, including:

1. clarifying that the maximum prison term for a first conviction of aggravated sexual assault of a minor is 50 years;
2. making it an affirmative defense, rather than a standard defense, that an assault of a health care employee was a direct manifestation of the defendant's disability;
3. prohibiting this defense for individuals with a disability manifested only by repeated criminality or antisocial conduct;
4. changing certain procedures concerning court filings after law enforcement officials are granted ex parte court orders compelling disclosure of cell phone and internet records;
5. expanding the circumstances in which courts must disclose erased criminal records, including requiring disclosure to counsel in habeas proceedings if evidence of erased charges may become relevant; and
6. eliminating a requirement that the chief state's attorney adopt certain regulations.

The bill also requires any executive branch department head and the



state Supreme Court's chief justice to promptly notify the Division of Criminal Justice if someone dies while in the care, custody, or control of anyone under the department head's or chief justice's jurisdiction (§ 1).

\*House Amendment "A" (1) adds the provision which eliminates the requirement that the chief state's attorney adopt certain regulations and (2) makes technical and clarifying changes concerning court orders to compel disclosure of cell phone and internet records.

EFFECTIVE DATE: October 1, 2017

## **§ 2 — AGGRAVATED SEXUAL ASSAULT OF A MINOR**

The bill clarifies that the maximum prison term for a first conviction of aggravated sexual assault of a minor is 50 years.

Under current law, the statute defining the offense provides that someone convicted of this crime must be sentenced to a 25-year mandatory prison term for a first offense. Another law provides that this crime is punishable by a prison term of 25 years to 50 years (CGS § 53a-35(a)(3)). The bill amends the law defining the offense to specify that the 25-year term is a mandatory minimum, and thus the maximum sentence can be 50 years.

Under existing law, unchanged by the bill, there is a mandatory 50-year prison term for a subsequent offense.

## **§ 3 — ASSAULT OF A HEALTH CARE EMPLOYEE**

Under existing law, assault of a health care employee is a class C felony, punishable by up to 10 years in prison, a fine of up to \$10,000, or both. Current law allows a defendant to claim as a defense that he or she has a mental, physical, or intellectual disability and the conduct was a clear and direct manifestation of the disability.

The bill makes two changes to these provisions. First, it provides that the defense is an affirmative defense. By law, a defendant has the burden of establishing an affirmative defense by a preponderance of

the evidence, while the state has the burden of disproving other defenses beyond a reasonable doubt (CGS § 53a-12).

Second, under the bill, an abnormality manifested only by repeated criminal or antisocial conduct is not a qualifying mental disability for purposes of this defense.

#### **§ 4 — COMPELLED DISCLOSURE OF CELL PHONE AND INTERNET RECORDS**

By law, law enforcement officials can apply for ex parte court orders (i.e., orders issued without a hearing or prior notice to a customer) to compel phone and internet providers to disclose certain information about their customers' accounts or activities, for use in criminal investigations. Specifically, they can apply for such orders to compel:

1. telecommunications carriers to disclose call-identifying information,
2. electronic communication or remote computing service providers to disclose basic subscriber information, and
3. any such companies to disclose a communication's contents or the geo-location data associated with call-identifying information.

The bill makes technical changes to clarify the standards that must be met to grant these orders. Under current law and the bill, the standard is (1) reasonable and articulable suspicion of a crime, to compel disclosure of call-identifying or basic subscriber information, and (2) probable cause, to compel disclosure of a communication's contents or the geo-location data. In any such case, the information to be disclosed must be relevant and material to an ongoing criminal investigation.

By law, after the court issues such an order, the law enforcement official must mail notice of the order within 48 hours to the person whose records were sought, unless the official requests a 90-day delay

for certain reasons (e.g., notification would endanger someone's safety).

Current law requires the official to file a copy of the notice with the court that issued the order. The bill instead requires the official to file the notice with the court where anyone who could be arrested in relation to the order would be presented. It also requires the notice to include the case number assigned to the investigation.

Under existing law, if the official who requested the order receives information in response to it, he or she must file a return with the court within 10 days, including an inventory of the information received. The bill requires the return and inventory to (1) include the investigation case number and (2) remain sealed until the notice is filed.

The bill makes additional technical changes to conform to changes made in PA 16-148, clarifying that the notice provisions and other requirements apply to communications data and geo-location data as set forth in that act.

## **§ 5 — DISCLOSURE OF ERASED CRIMINAL RECORDS**

The bill requires the court to disclose erased criminal records to:

1. the petitioner's and respondent's attorneys in connection with any habeas corpus proceeding or other collateral civil action in which evidence about a nolle or dismissed criminal charge may become relevant (see BACKGROUND, *Related Case*) and
2. the prosecutor and defense counsel in connection with (a) false statement charges or (b) proceedings on sentence enhancement for an offense committed while the person was on release (e.g. by someone who posted bail).

The bill also requires, rather than allows, the court to disclose erased records to:

1. a defendant in an action for false arrest arising out of the erased proceeding and
2. the prosecutor and defense counsel when the records are connected to a perjury charge that the prosecutor alleges to have arisen from testimony at trial.

## **§ 6 — ELIMINATION OF REGULATION REQUIREMENT**

By law, a law enforcement agency must inform the chief state's attorney and the appropriate state's attorney if it is conducting an investigation that may affect a Superior, Appellate, or Supreme Court judge or Judicial Branch employee. The chief state's attorney must then inform the chief court administrator of the investigation, as long as the disclosure does not compromise the investigation.

The bill eliminates the requirement that the chief state's attorney adopt regulations to implement these provisions.

## **BACKGROUND**

### ***Erased Criminal Records***

The law requires the erasure of police, prosecutorial, and court records when a person:

1. is found not guilty or has his or her charges dismissed and the period to file an appeal expires or an appeal upholds the determination;
2. has a charge nolle and 13 months pass;
3. makes a motion for a nolle, if the charge was continued at the prosecutor's request and there has been no prosecution or disposition for 13 months; or
4. receives a pardon.

The person charged is deemed to have never been arrested for the erased charges (CGS § 54-142a).

**Related Case**

In *State v. Apt* (319 Conn. 494 (2015)), the Connecticut Supreme Court considered the case of a defendant who was arrested for committing a crime, released on bond, and later arrested and convicted of another crime. On the later crime, the state sought to enhance the defendant's sentence because the later crime was committed while the defendant was released on bond for the original charge (see CGS § 53a-40b). Before the hearing on the sentence enhancement, the original charge on which the defendant was released on bond was dismissed, and the records of it erased.

The court ruled that the state could not use the erased records to prove that the defendant was on release when he committed the later crime and, therefore, eligible for the sentence enhancement. But the court also ruled that the state could seek to prove eligibility for the sentence enhancement using other evidence.

**Related Bill**

sHB 7291 (File 705), passed by the House on May 17, sets conditions for law enforcement officials to install and use a cell site simulator device to obtain geo-location data related to a criminal investigation. Specifically, it allows them to do so for up to (1) 48 hours without a court order in exigent circumstances and (2) two weeks under an ex parte court order issued under a probable cause standard.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 39      Nay 0      (03/29/2017)